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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1966

No. 1103

RICHARD ANTHONY BEM,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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The Petitioner above-named petitions for a Writ of Certiorari to review the judgment of the Justice Court of the Woodland Judicial District, County of Yolo, State of California.

OPINIONS BELOW

The opinion of the Superior Court of the State of California, in and for the County of Yolo, No. 3026, is attached to this Petition as Appendix I. There was no written opinion in the trial Court.

JURISDICTION

The Opinion on appeal by the Superior Court of the State of California, in and for the County of Yolo was rendered on December 13, 1965. A timely Petition for Rehearing and Motion for an Order Publishing Opinion in Advance California Reports was filed on December 16, 1965. A copy of said Petition for Rehearing and Motion for Order Publishing Opinion in Advance California Reports is attached to this Petition as Appendix II. On December 21, 1965 the Superior Court of the State of California, in and for the County of Yolo, denied Petition for a Rehearing of Motion for Order Publishing Opinion in Advance California Reports. A copy of said denial is attached to this Petition as Appendix III.

The question presented by this Petition was raised by the trial court by a Motion to Compel the Court to have a reporter present at Defendant's trial. A copy of said motion is attached to this Petition as Appendix IV. Said motion was denied by the Court below. Petitioner filed a timely Notice of Motion for a New Trial and Points and Authorities in Support thereof in the Court below. A copy of said Motion and Points and Authorities are attached to this Petition as Appendices V and VI. Petitioner's Motion for a New Trial was denied by Order of the Justice Court, Woodland Judicial District, County of Yolo, State of California, on July 3, 1965. A copy of said Order is attached to this Petition as Appendix VII. The Superior Court of the State of California, in and for the County of Yolo, considered the question raised in this

Petition on its merits and specifically decided it adversely to Petitioner.

QUESTIONS PRESENTED

Whether or not the Defendant in a State Criminal Trial in an Inferior Court is deprived of his right to a fair trial under the Fourteenth Amendment of the United States Constitution where his right to appeal a judgment of conviction is violated by an inadequate record in the trial court.

CONSTITUTIONAL PROVISIONS INVOLVED

1. United States Constitution, Fourteenth Amendment:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny to any person within its jurisdiction the equal protection of the law."

STATEMENT

The complex problems involved in this case are based on whether or not a Defendant in a Criminal Action in an Inferior State Court is entitled to protect his rights of appeal by insisting on an adequate record of the proceedings at the trial level.

"A Defendant in a Criminal Action in the State of California, in both Superior and Inferior

Courts has the right to appeal from a Final Judgment of Conviction."

See:

California Penal Code, Section 1237(1) and Section 1466(2)(a).

"Such an appeal presents for review any errors occurring at the trial, the sufficiency of the evidence to support the judgment, and the validity of the Judgment."

See:

Witkin's *California Criminal Procedure,* at page 640, Section 646.

A Defendant in a criminal proceeding in the Superior Court of the State of California is granted, as a matter of right, a reported transcript of all proceedings taken against him. The judges in the Superior Court of the State are trained practitioners in the law, being members of the Bar Association of the State, thus by reason of their training and background competent to rule on questions that arise during the course of the trial. Such is not the case in the Justice Courts of the State, where the presiding Justice is, in the vast majority of instances, a layman with little or no legal training, and thus not as competent to rule on questions of law and the sufficiency and admissibility of evidence which become part of the trial, as is the trained practitioner. Hence, error is much more likely to occur in the Justice Court where the presiding Justice, who is ruling on the admissibility of certain evidence offered against

the Defendant and on the procedure during trial, is a man, who in many instances is devoid of any legal background or training.

Thus, if there is no record of the proceedings in the Justice Court, or if the record is incomplete or inadequate, the Defendant's right to appeal is in effect a nullity. Further, a denial of an adequate record by failure to have a reporter present deprives the Defendant of due process of law as guaranteed under the Fourteenth Amendment of the United States Constitution.

An inadequate record from which to appeal is in effect no record at all and where the punishment in Justice Courts can involve fines of up to $1000.00 and incarceration of periods up to one year, a Defendant is deprived of a substantial right by the failure of the Court to insure an adequate record to protect the Defendant's right of appeal.

REASONS FOR GRANTING WRIT

In Order to insure a uniformity of opinions on important questions of law and to protect the rights of Defendants in criminal actions in the Superior Courts in the State from over-zealous prosecuting attorneys and from inadequately trained Judges it is imperative that a record of the proceedings at the trial be full and complete. Where the records of the trial court are other than a completely reported transcript it is

not only possible but probable, that prejudicial error could occur without ever being recorded.

Without a full and complete record of the proceedings taken against him a Defendant in a criminal proceeding in an Inferior Court is deprived of due process of law and the equal protection of the law.

For the reasons stated we respectfully submit that the Petition should be granted.

Dated, Woodland, California,
March 1, 1966.

Respectfully submitted,
YOUNG, NAREAU & HOYT,
By ROBERT J. NAREAU,
Attorneys for Petitioner.

(Appendices Follow)

Appendix I

In the Superior Court of the State of California,
in and for the County of Yolo

No. 3026

The People of the State of California,
Plaintiff,

vs.

Richard Anthony Bem,
Defendant.

OPINION

On April 5, 1965 a criminal complaint was filed against the appellant in the Justice Court of the Woodland Judicial District. Count I charged appellant with a violation of Section 23102 (a) of the California Vehicle Code, driving while under the influence of intoxicating liquor; Count II, a violation of Section 22350 of the California Vehicle Code, basic speed law, and Count III, a violation of Section 4454 of the California Vehicle Code, failure to display registration. On May 14, 1965 appellant entered a plea of not guilty to each of the three counts. He demanded a trial by jury and the cause was set for jury trial on July 14, 1965.

On July 12, 1965 appellant filed with the Court a written Motion To Compel Court To Have Reporter At Trial, such reporter to be provided by the Court without expense to appellant. The motion was argued on July 14, 1965, immediately prior to the commencement of the trial.

The prosecution opposed the motion, contending Code of Civil Procedure Section 1010 required a statement of grounds for such a motion and that the grounds therefor were not stated. The prosecution further cited Code of Civil Procedure Section 1005, contending that it required five days notice for such a motion, which was not given.

The appellant seemingly contended in support of the motion that since he had a right to appeal, such right to appeal is in effect a nullity if there is no record of the proceedings taken against him during the trial, and that this denial deprived him of due process of law as guaranteed under the Fourteenth Amendment of the United States Constitution and Article I, Section 7 of the California Constitution.

Appellant's motion was denied by the Trial Court, and the trial proceeded without the presence of a court reporter.

The jury found the appellant guilty on Counts I and II and not guilty on County III. Appellant's Motion For New Trial was denied. Judgment was pronounced as follows: "Six months suspended, two years probation. Ten days mandatory jail sentence. $500.00 plus $50.00 Penalty Assessment or 110 days in the Yolo County Jail. Ten days mandatory jail

sentence to be served on consecutiye weekends." Appellant appeals from the Judgment.

I

On appeal the appellant contends that the Trial Court committed an error in law in denying his Motion To Compel Court To Have Reporter At Trial, and in denying appellant's Motion For A New Trial upon the same ground.

Appellant contends:

> "The defendant in any criminal proceeding in the Superior Court is granted as a matter of right a reported transcript of all proceedings taken against him. The Judges in the Superior Courts are all trained practitioners in the Law, being members of the California Bar Association, and thus by reason of their training are competent to rule on questions of evidence that arise during the course of a trial. Such is not the case in the Justice Court where the presiding Justice is in the vast majority of instances a layman with little or no legal training and thus not competent to rule on questions of law and the sufficiency and admissibility of evidence which become a part of the trial. Hence, error is much more likely to occur in a Justice Court where the presiding Justice who is ruling on admissibility of certain evidence offered against the defendant and on the procedure during trial is a man who, in many instances, is devoid of legal background or training.
>
> Thus, if there is no record of the proceedings in the Justice Court, the defendant's right to appeal is in effect a nullity and a denial of an ade-

quate record by failure to have a reporter present deprives defendant of due process of law as guaranteed under the Fourteenth Amendment of the United States Constitution and Article I, Section 7 of the California Constitution.

An inadequate record from which to appeal is in effect no record at all and where punishment in the Justice Courts can involve fines of up to $1000.00 and incarceration for periods of up to one year the defendant is deprived of a substantial right by failure of the Court to insure an adequate record to protect the defendant's right of appeal."

II

The substantive law governing appeals from Justice Courts to the Superior Court is found in the Penal Code Sections 1466, 1467, and 1469. The practice and procedure are governed by the Judicial Council Rules on Appeal from Municipal Courts and Justice Courts in Criminal Cases enacted in 1936, pursuant to authority granted by Penal Code Section 1468. The pertinent Judicial Council rules are Rules 183, 184, and 187. Rule 183 provides for the basic record, which consists of the complaint, pleas, instructions, verdict, motions, demurrers, minutes, Judgment or Order, Notice of Appeal and Exhibits. If the appellant seeks a consideration of the evidence or other proceedings not covered by the above listed items, Rule 184 requires that he must prepare a statement on appeal. The procedure for the preparation of the statement on appeal is set forth in Rule 184 and Rule 187.

III

It is the opinion of the Court that Rule 183 et seq. of the Judicial Council Rules on Appeal provided a reasonable and satisfactory method for the preparation of a statement or record on appeal, and did not deny the appellant due process of law. They provide an adequate substitute for a stenographer's transcript. The fact that a Justice Court Judge is not a lawyer should not affect his ability to decide and state, with the aid of counsel, what occurred during the Trial Court Proceeding. Furthermore, appellant sets forth no facts to show that the Trial Court Judge in this case was unable to decide and state what occurred during the Trial Court proceeding, nor does he assert that any error occurred in the trial proceeding.

Draper v. Washington (1963) 372 U.S. 487, 9 L. ed. 2d 899, 83 S. Ct. 774, contains the latest pronouncement of the United States Supreme Court on the subject of transcripts and alternative methods of reporting felony trial proceedings. At page 495 the Court said:

> "In considering whether petitioners here received an adequate appellate review, we reaffirm the principle, declared by the Court in Griffin, that a State need not purchase a stenographer's transcript in every case where a defendant cannot buy it. 351 US at 20. Alternative methods of reporting trial proceedings are permissible if they place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise. A statement of facts agreed to by both sides, a full narrative statement

based perhaps on the trial judge's minutes taken during trial or on the court reporter's untranscribed notes, or a bystander's bill of exceptions might all be adequate substitutes, equally as good as a transcript."

The appellant's application for the certificate of this Court under Penal Code Section 1471, is denied.

The Judgment of the Trial Court is affirmed.

Dated: December 13, 1965.

Judge of the Superior Court
Warren K. Taylor

Filed December 13, 1965,
Laurence P. Henigan, Clerk.

Appendix II

In the Superior Court of the State of California,
in and for the County of Yolo

No. 3026

The People of the State of California,
Plaintiff,
vs.
Richard Anthony Bem,
Defendant and Appellant.

PETITION FOR REHEARING AND MOTION FOR ORDER PUBLISHING OPINION IN ADVANCE CALIFORNIA REPORTS

To the Honorable Warren K. Taylor, Judge of the Yolo County Superior Court, County of Yolo, State of California:

Appellant respectfully requests a rehearing upon the grounds that the Court has committed error and to prevent a miscarriage of justice, as is more particularly set forth below.

I

The Court erred in relying on the case of Draper v. Washington (1963) 372 U.S. 487, 9 Lawyer's Addition 2nd 899, 83 Supreme Court 774 in arriving

at its decision in that the Draper case is not in point with the facts on appeal.

In the Draper case the Court merely stated that the State need not purchase a transcript in every case where a Defendant cannot buy it. Appellant's contention is that he was denied due process in that the case was not reported. The question of the cost of transcript is not an issue.

In the Draper case the Court further stated that alternative methods of reporting trial proceedings are permissible, if they place before the Appellate Court an equivalent record of the case. Appellant's contention is that without a reporter that there is not and cannot be a record that is equivalent to a reported transcript.

The Court in Draper further states that a Statement of Facts agreed to by both sides is an acceptable substitute for a reporter's transcript in some instances. In the case at bar there was not and could not be any agreement reached by both sides as to actually what went on during the case, and apparently the trial judge's minutes do not reflect these points in controversy.

Appellant also urges that he was denied due process of law by the above-entitled honorable Court not certifying this matter to the District Court of Appeal *or* Ordering the Court's opinion to be published in Advance California Reports so that the District Court of Appeal could on its own motion order the case before it for review. If neither of the above is done Appellant is forced to apply to the Supreme Court

of the United States for remedy at great cost and expense to him.

Appellant urges that the question of whether or not a criminal case should be adequately reported, thus protecting a Defendant's right to appeal, is such an important question of law that the Court should act in a manner which would allow the District Court of Appeal of the State of California to rule on this question.

Wherefore Petitioner prays for an Order granting a rehearing of this cause, or, that the Court order its opinion to be published in Advance California Reports so that the District Court of Appeal can on its own motion order the case before it for review.

Dated December ....., 1965.

Young, Nareau & Hoyt,
By Robert J. Nareau,
Attorneys for Appellant.

Filed December 16, 1965,
Laurence P. Henigan, Clerk.

Appendix III

In the Superior Court of the State of California, in and for the County of Yolo

Woodland, California. Dec. 21, 1965
No. 3026 Dept. No. One

Judge: Hon. Warren K. Taylor.
Clerk: Mildred Sanderson.
Reporter: None.

The People of the State of California,
Plaintiff and Respondent,
vs.
Richard Anthony Bem,
Defendant and Appellant.

Counsel for Plaintiff and Respondent: Thomas A. Purtell, District Attorney

Counsel for Defendant and Appellant: Young, Nareau & Hoyt

The Court, having duly considered the Appellant's Petition for Rehearing and Motion for Order Publishing Opinion in Advance California Reports, filed herein on December 16, 1965, now orders that said Appellant's Petition and Motion be and is hereby denied.

Appendix IV

In the Justice Court of the Woodland Judicial District, County of Yolo, State of California

No. 56-732-244

People of the State of California,
Plaintiff,
vs.
Richard Anthony Bem,
Defendant.

MOTION TO COMPEL COURT TO HAVE REPORTER AT TRIAL.

To the Honorable Clarence Walden, Judge of the Justice Court, Woodland Judicial District, Yolo County, State of California:

Defendant, Richard Anthony Bem, moves the above-entitled Honorable Court to have present a Certified Court Reporter, without expense to said Defendant Richard Anthony Bem, at the trial of the cause currently pending against him in aforesaid Honorable Court.

Dated this 12th day of July, 1965.

By
Attorney for Defendant
Young, Nareau & Hoyt

POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION

"In both Superior and Inferior Courts, the Defendant may appeal from a final judgment of conviction." California Penal Code Section 1237 (1), Section 1466 (2)(a).

"Such an appeal presents for review any errors occurring in the trial, the sufficiency of the evidence to support the judgment, the validity of the judgment." See Witkin California Criminal Procedure, page 640, Section 646.

The Defendant's right to appeal is in effect a nullity if there is no record of the proceedings taken against him during trial. Such a denial thus deprives a defendant of due process of law as guaranteed under the Fourteenth Amendment of the United States Constitution and Article One, Section 7 of the California Constitution.

Filed July 12, 1965,
Clarence Walden,
Judge of the Justice Court.

Appendix V

In the Justice Court of the Woodland Judicial District, County of Yolo, State of California

No.

People of the State of California,
Plaintiff,

vs.

Richard Anthony Bem,
Defendant.

NOTICE OF MOTION FOR NEW TRIAL

To the People of the State of California and to Daniel Murray, Deputy District Attorney, County of Yolo, State of California:

You will please take Notice that On Friday, July 23rd, 1965 at the hour of 9:30 A.M., or as soon thereafter as counsel can be heard, Richard Anthony Bem, Defendant in the above-entitled action intends to move the above-entitled Court to vacate and set aside the verdict heretofore rendered in the above-entitled action and to grant a new trial of said cause upon the following grounds, all material effecting the substantial rights of said Defendant, Richard Anthony Bem.

1. That the Court erred in denying Defendant's motion to compel the above-entitled Honorable Court to have the above-entitled cause reported.

Said motion with respect to the ground mentioned above will be made upon the minutes of the Court and upon all of the records in this case and on a Memorandum of Points and Authorities to be submitted hereafter.

Dated this 19th day of July, 1965.

Young, Nareau & Hoyt,
By Robert J. Nareau,
Attorney for Defendant.

POINTS AND AUTHORITIES

Section 1181, Penal Code, State of California.

Filed July 20, 1965
Clarence Walden,
Judge of the Justice Court.

Appendix VI

In the Justice Court of the Woodland Judicial District, County of Yolo, State of California

No. 56-732-244

The People of the State of California, Plaintiff,

vs.

Richard Anthony Bem, Defendant.

POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR A NEW TRIAL.

"In both Superior and Inferior Courts, the Defendant may appeal from a Final Judgment of Conviction." Cal. Penal Code, Section 1237 (1), Section 1466 (2)(a).

"Such an appeal presents for review any errors occurring in the trial, the sufficiency of the evidence to support the judgment, and the validity of the judgment." Witkin, California Criminal Procedure, page 640, Section 646.

The Defendant's right to appeal is in effect a nullity if there is no record of the proceedings taken against him during the trial. Such a denial of an adequate record by failure to have a reporter present thus deprives a Defendant of Due Process of Law as

guaranteed under the Fourteenth Amendment of the United States Constitution and Article I, Section 7 of the California Constitution.

Dated this 20th day of July, 1965.

Young, Nareau & Hoyt,
By Robert J. Nareau,
Attorneys for Defendant.
Filed July 21, 1965,
Clarence Walden,
Judge of the Justice Court.

Appendix VII

In the Justice Court of Woodland Judicial District
County of Yolo, State of California

No. 56-732-244

The People of the State of California,
Plaintiff,

vs.

Richard Anthony Bem,
Defendant.

ORDER

This cause coming before me on motion of the defendant, Richard Anthony Bem, on the 23rd day of July, 1965, for a new trial, the defendant being represented by his counsel, Robert J. Nareau, and the people being represented by Thomas A. Purtell, District Attorney, and the Court having heard argument of counsel, and being fully advised in the premises:

It Is Hereby Ordered that the motion of said defendant for a new trial be and the same is hereby denied.

Dated: July 23, 1965.

Charles W. Styler
Acting Judge of the Justice Court
Woodland Judicial District